

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

TAMMY SEELY,

Plaintiff,

v.

BANK OF AMERICA CORP.

Defendant.

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Civil Action No.: 4:12-cv-493  
Judge Sim Lake

**DEFENDANT'S NOTICE OF PLAINTIFF'S  
FAILURE TO RESPOND TO MOTION TO COMPEL**

Defendant Bank of America Corp. ("Defendant"), through undersigned counsel, respectfully submits this Notice of Plaintiff's Failure to Respond to Motion to Compel and states as follows:

1. Plaintiff's responses to Defendant's discovery requests were due on June 25, 2012. (*See Motion to Compel ¶¶ 3-4, Dkt. No. 11 and Ex. 1 thereto.*)

2. Despite repeated inquiries from Defendant, and Plaintiff's promise to provide discovery responses by July 11, Plaintiff failed to respond to Defendant's discovery requests. (*See Motion to Compel ¶¶ 5-12, Dkt. No. 11 and Exs. 2-5 thereto.*)

3. Accordingly, on July 27, Defendant filed a Motion to Compel discovery responses. (*Dkt. No. 11*). Plaintiff failed to respond to the motion within 21 days of service as required by the local rules. See S.D. Tex L.R. 7.3.

4. On August 28, after realizing that Counsel for Plaintiff, Jason Sweny, was in violation of Local Rule 5 by failing to register for the Court's electronic filing system, undersigned counsel e-mailed, faxed, and mailed a copy of the Motion to Compel and a cover

letter to Mr. Sweny, with a copy to the Court. (*See August 28, 2012 Letter to Court, Dkt. No. 13.*) Defendant agreed to permit Plaintiff an additional 21 days from the date of the letter, or until September 18, to respond to Defendant's Motion to Compel. (*Id.*)

5. As of the filing of this Motion, Mr. Sweny still has not responded to counsel's e-mail messages or letters regarding the overdue discovery responses or the Motion to Compel. Accordingly, the Motion to Compel is fully briefed and unopposed and ready for the Court's consideration.

Respectfully submitted,

/s/ Brian Patterson

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ATTORNEY-IN-CHARGE FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of September, 2012, the undersigned filed the foregoing Notice using the Court's ecf system, and that a copy of the foregoing Defendant's Notice of Plaintiff's Failure to Respond to Motion to Compel was served by fax and United States Mail, postage prepaid, on:

Jason Sweny  
2909 Hillcroft Avenue, Suite 350  
Houston, Texas 77057

/s/ Brian Patterson

Brian Patterson